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No. 491

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

UTILITY USERS LEAGUE and
NICHOLAS L. BARNES,

Petitioners,

vs.

FEDERAL POWER COMMISSION,

Respondent,

COMMONWEALTH EDISON COMPANY,

Intervenor-Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF INTERVENOR-RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Petitioners, Utility Users League (an alleged "association of utility users including customers of Commonwealth Edison Company")[1] and Nicholas L. Barnes (an Edison customer), intervened before the Federal Power Commis-

[1] Petition for Leave to Intervene. Rec. 1551. References to "Rec. . . . " are to the Record before the Commission as certified to the Court of Appeals.

sion[2] (the "Commission") in opposition to the then proposed merger of Central Illinois Electric and Gas Company into Commonwealth Edison Company (the "Merger"). After full hearing, the Commission, finding that the Merger would result in substantial economies, have no adverse effect upon competition and be properly reflected on the surviving corporation's accounts, issued its order approving the transaction. No consequence, adverse to the interests of either Petitioners or anyone else, was found.

The Court of Appeals affirmed, concluding not only that the absence of adverse effect upon Petitioners' interests left them without standing, but that the Commission had in fact fulfilled its statutory responsibilities in its analysis and authorization of the Merger.

Thus, as the Court of Appeals' decision was based upon the alternative grounds of Petitioners' lack of standing and the propriety of the Commission's action, the question presented is whether either of these two conclusions was correct.

STATEMENT OF THE CASE

The petition for certiorari seeks review by this Court of the decision of the Court of Appeals for the Seventh Circuit (*Utility Users League* v. *Federal Power Commission*, 394 F.2d 16 (1968)) affirming the Commission's order approving the merger of Commonwealth Edison Company ("Edison") and Central Illinois Electric and Gas Company ("Central"). *Commonwealth Edison Company and Central Illinois Electric and Gas Company*, 36 FPC 927 (1966).

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[2] Petitioners did not appear at the hearings, their participation in the proceedings consisting solely of the filing of briefs, various motions and a series of "Interrogatories" (the last being set forth in the Joint Appendix of the Federal Power Commission and Commonwealth Edison Company at pages 95-151).

The merging companies were both public utilities incorporated under the laws of the State of Illinois, operating within their respective franchised service areas in that state. 36 FPC 927, 932-33[3]. Edison, by far the larger of the two, was an electric utility serving a population of some 7,100,000 in its service area of approximately 11,000 square miles. Its net plant as of December 12, 1965 was $1,788,082,518. 36 FPC 927, 932. Central was engaged in supplying electric, gas and minor amounts of water and steam heat service in various territories in the State. It served approximately 95,000 electric customers in five non-contiguous territories. The largest, from which Central derived 80% of its business, was the Rockford area, bordered on three sides by Edison's service area. Central's net plant, as of December 31, 1965, was $91,681,655, of which $56,422,122 was devoted to rendering electric service and $33,761,799 to rendering gas service. 36 FPC 927, 933.

On March 1, 1966, Edison and Central concluded an agreement of merger. The Merger was statutory in form, with each share of Central common stock being converted into one share of Edison $1.425 Convertible Preferred Stock. The Convertible Preferred Stock could be exchanged for 6/10ths of a share of Edison common and, at Edison's option, was callable after five years for a price of $42 per share. 36 FPC 927, 934. The transaction was accounted for under the "pooling of interest" concept of accounting. Thus, the assets and liabilities reflected in the various accounts of the merging companies were combined to form the accounts of the surviving corporation with no change in the basis of accountability. The convertible pre-

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[3] The references to 36 FPC . . . are to the findings of the Commission as contained in its order authorizing the Merger. *Commonwealth Edison Company and Central Illinois Electric and Gas Company*, 36 FPC 927 (1966).

ferred stock was recorded at its aggregate stated value, the difference between such stated value and Central's common equity being transferred from Edison's premium on common stock. There was, therefore, no acquisition adjustment resulting from the merger. 36 FPC 927, 937.

Pursuant to Section 203(a)[4] of the Federal Power Act, Edison and Central, on March 2, 1966, filed their joint application for Commission authorization of the Merger. On April 7, 1966, seven days after the last day set for filing protests or petitions for leave to intervene, a petition seeking intervention was filed on behalf of the Petitioners. Public hearings were set for July 11, and by an order dated July 6, 1966, Petitioners' request for intervention was allowed.

The evidence presented to the Commission demonstrated, and the Commission found, that the Merger would result in savings of $13,000,000 in bulk power generating and transmission costs during the first 10 years of combined operation. Additional savings attributable to such items as labor and administrative costs were shown to accrue to the merged system. 36 FPC 927, 938.

The integration of Central's generating system with Edison's served to greatly increase bulk power resources available to Central's customers, thus improving service reliability. 36 FPC 927, 935 and 938.

While the only immediate effect upon rates was a reduction of approximately $270,000 per annum to Central's Rockford area customers, more substantial benefits were to be expected, for the cost savings achieved by the Merger would result in rates lower than would otherwise have prevailed. 36 FPC 927, 937-38.

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[4] 16 U.S.C. § 824b(a) (1964). The Federal Power Act, 16 U.S.C. §§ 791a et seq. (1964), is referred to herein as the "Power Act."

Furthermore, the Merger produced a more rational alignment of Illinois service territories. The island which was Central's Rockford service area was eliminated with resultant improvement in service to the boundary areas. 36 FPC 927, 938. All of Central's electric service territory outside of the Rockford area was closer to Edison's generating facilities than Central's and portions of it would be traversed by the Edison transmission system. Thus, eventual physical integration of those service territories into the main power system was facilitated. 36 FPC 927, 943 n.21 and Rec. 971 and 973.

On the basis of the foregoing findings of benefit and the absence of adverse effects flowing from the transaction, the Commission, on December 2, 1966, authorized the Merger as consistent with the public interest, and the Merger was consummated on December 9, 1966. Jurisdiction over the question of Edison's continued operation of Central's gas distribution facilities and the electric service territories other than the Rockford area was retained by the Commission. 36 FPC 927, 945.

On petition for review, after full briefing and oral argument of the merits as well as Petitioners' standing to seek review, the Court of Appeals affirmed. The Court held not only that the absence of adverse effect upon the Petitioners' interests left them without standing, but that the Commission had properly fulfilled its statutory duties in its examination of the Merger.[5]

ARGUMENT

The questions framed by Petitioners are simply not present in this case. Their arguments with respect to their

[5] The court was unanimous in the conclusion that Commission authorization of the Merger was proper, but Judge Swygert, concurring, disagreed with the majority's holding that Petitioners lacked standing.

standing proceed as though the Court of Appeals decided questions not presented to it and are predicated upon a fundamental misunderstanding of the rate making process. Their remaining arguments are similarly academic for they rest upon assumptions contrary to uncontested Commission findings.[6]

Petitioners Lack Standing to Seek Review.

Section 313(b)[7] of the Power Act limits standing to challenge Commission action to those parties "aggrieved" by it. One's status as a party aggrieved is jurisdictional and must be demonstrated. *Lynchburg Gas Co.* v. *Federal Power Commission*, 284 F.2d 756 (3d Cir. 1960); *Cincinnati Gas & Electric Co.* v. *Federal Power Commission*, 246 F.2d 688 (D.C. Cir. 1957).

Despite Petitioners' allusions to the contrary, no one contends, and the Court did not rule, that a utility's customers, as such, are without standing to seek review of administrative action affecting the utility. Nor did it rule,

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[6] In addition to their attempts to raise questions as to the applicability of the policies of the Public Utility Holding Company Act of 1935 (15 U.S.C. §§ 79 et seq. (1964), referred to herein as the "Holding Company Act"), and the antitrust laws, to the Commission's responsibilities under the Power Act, discussed *infra*, Petitioners now seek to raise one question not presented by them to the Court of Appeals. At various points in their petition for certiorari they allude to the question whether Section 203a's "consistent with the public interest" standard requires a showing of positive public benefit beyond that required to outweigh any adverse consequences of a transaction. Suffice it to say that such a construction, which is at war with both the language and context of the section (*Pacific Power and Light Co.* v. *Federal Power Commission*, 111 F.2d 1014, 1016 (9th Cir. 1940)), would not advance Petitioners' case, for the Commission found positive public benefit and no public detriment.

[7] 16 U.S.C. § 8251(b) (1964).

as Petitioners suggest, that customers whose interests are adversely affected may not advance any ground, irrespective of its relationship to their interests, to overturn the administrative action. The Court merely ruled that where, as here, that action does not result in an adverse effect upon any of their interests they are not aggrieved thereby.

Petitioners claim to be aggrieved as Edison customers by the effect of the merger upon their rates. But, under the law of Illinois, pursuant to which those rates are fixed, the Merger can have no adverse effect upon Edison's rates. Rates are, of course, only based on the value of the capital devoted to the enterprise, and the Merger, involving no acquisition adjustment, could have no effect upon such value.[8] The Illinois Commerce Commission, which is charged with the sole responsibility for fixing rates paid by Illinois consumers, will only allow a rate sufficient to "produce a fair return upon the *property* used and employed in the public service." *Peoples Gas Light and Coke Co.* v. *Slattery*, 373 Ill. 31, 48, 25 N.E.2d 482, 492 (1940) (emphasis added). And that fair return is based only on the present fair value of such property, not what was issued in exchange therefor. *Illinois Bell Telephone Co.* v. *Illinois Commerce Commission*, 414 Ill. 275, 287-89, 111 N.E.2d 329, 336-37 (1953). Thus, even were Petitioners correct in their assertion that the value of the securities issued by Edison in connection with the Merger was "excessive"[9], that fact could have no adverse effect upon rate-payers.

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[8] As noted, the Merger was accounted for under the "pooling of interest" theory, with no write-up of assets. Thus, even Edison's own books would provide it with no argument for a rate increase as a result of the transaction.

[9] Petitioners do not dispute the Commission's finding that the purchase price, or conversion ratio, was arrived at by good faith, arm's length bargaining between Edison and Central and that the Merger could not have been accomplished at the book value of Central's assets or the market value of Central's stock. 36 F.P.C. 927, 937.

As the only serious[10] claim of adverse impact upon any of Petitioner's interests is without merit, the ruling that under the circumstances of this case they were not aggrieved by the Commission's authorization of the Merger was correct. But, in any event, it was only an alternative basis for affirmance of the Commission's order by the Court of Appeals. That Court did consider the merits of the order on the assumption that Petitioners had standing.

The Merger Presents No Question of the Relationship of the Policies of Either the Holding Company Act or The Antitrust Laws to the Power Act.

Petitioners seek to have this Court determine the proper resolution of any conflict between the policies of the Power Act and the policies of the Public Utility Holding Company Act and the antitrust laws. This case, however, does not require any such determination, for the facts show that there was no conflict to resolve.

A. Petitioners' allusions to the Merger's conflict with the Holding Company Act's policies against the operation of combined gas and electric systems and the operation of unintegrated properties (Sections 10 and 11, 15 U.S.C. §§ 79 j and k (1964)) overlook the fact that the merger did not create such a system. Prior to the Merger Central was a combination gas and electric utility operating non-contiguous property. Unlike the case where such a situation is brought about by an acquisition, the Merger merely substituted Edison for Central. *Cf. Western Light & Tele-*

[10] Petitioners persist in referring to an argument, first raised before the Court of Appeals, that the Merger will somehow contribute to air pollution in the City of Chicago. The basis of this contention has apparently escaped all who have been called upon to respond to it.

phone Co., 33 FPC 1147 (1965). In so doing, it promoted, rather than frustrated, the policies of the Holding Company Act. The non-contiguous properties are far closer to Edison's generating facilities than Central's, and at points will be traversed by Edison's transmission lines. Thus, eventual physical integration of those properties was rendered more likely by the Merger.

Moreover, the Commission retained jurisdiction over the question of whether the new system should continue to operate the gas facilities and non-contiguous electric facilities. Edison has been required to show, by not later than December 1, 1969, why it should continue to operate such properties, and render interim reports on the status of its studies for the integration or disposition of the properties on December 1, 1967 and December 1, 1968. 36 FPC 927, 945. Thus, in any event, review of the propriety of Edison's retention of these facilities would seem to be premature.

B. As is the case with their arguments predicated upon the policies of the Holding Company Act, Petitioners have chosen an improper vehicle to determine the relationship between the policies of the Power Act and the antitrust laws. This is not a case calling into question the scope of an agency's discretion to balance the anti-competitive impact of a transaction against the purposes of the regulatory scheme administered by it, for the Merger had no anti-competitive effects. As part of its determination of the Merger's consistency with the public interest the Commission considered its impact on competition. It found that the merger would not eliminate any meaningful competition for retail or wholesale customers, and would have no adverse effect upon competing energy sources. 36 FPC 927, 941. These findings, which can only lead to the con-

clusion that the Merger had no adverse effect upon competition, have never been challenged by Petitioners.

CONCLUSION

Petitioners' arguments present no substantial questions. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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PETITIONER'S

REPLY

MEMORANDUM

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vs.

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Respondent,

COMMONWEALTH EDISON COMPANY,
Intervenor-Respondent.

On Petition to Review orders of the Federal Power Commission

PETITIONERS' REPLY MEMORANDUM

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In the
Supreme Court of the United States

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PETITIONERS' REPLY MEMORANDUM

I. THE ISSUES BEFORE THE COURT ARE BASIC ERRORS OF LAW PROVEN BY RELIANCE UPON KEY FACTS.

Contrary to the FPC brief, this case was not brought to this Court on the issue whether the merger "Order (was) contrary to the evidence". (p. 13) In material respects, it is true such errors do exist, but the Petition was predi-

cated upon a combination of serious errors of law committed by both the Court of Appeals and the FPC. Our claims were buttressed by reliance upon (undisputed) key facts normally an indispensable basis for review of a complex utility rate case or financial transaction. These facts demonstrate a departure from principles consistent with the public interest and do not convert our Petition into a mere quarrel over adequacy of evidence. Unlike Edison and the FPC we did not import a telescope for our facts are clear to the naked eye. Our discussion of the opposing briefs referred to supplementary facts overlooked by the FPC confirm our claim the merger is inconsistent with the public interest.

II. THE PURCHASE PRICE WAS EXCESSIVE.

A. The FPC Brief Disregards The 50% Increase In Dividends Paid By Edison to Central's Common Stockholders.

Of the six factors considered by the Commission, purchase price is surely of major importance. FPC's claim the purchase price was not excessive and would not burden either Central's or Edison's customers is in large part grounded upon the statement (p. 14):

> "and the total capitalization of the merged company will not exceed the aggregate capitalization of Central and Commonwealth."

But it and the FPC order (pp. 15, 16) overlooked the drastic increase in dividend rate and total payments to Central's common stockholders by Edison. Central paid 90¢ a share in 1965. The Edison rate was $1.425 on the Convertible Preference Stock issued by Edison share for share for such Central stock. Central's total common stock dividend payment in 1965 was $3,918,641.[1] Edison agreed

[1] Exhibit D (p. 3) Moody's Public Utility Manual, 1966, p. 83.

to pay $6,200,000, or an annual increase of $3,000,000 to Central's common stockholders Edison's customers contributes 95% of this sum. Surely Edison's customers and a Court upon review had a right to expect this Commission would take such evidence into account before concluding no real difference affecting consumer's interest between the old and new capitalization existed.

The claim by FPC the purchase price "could in no way burden the consumers of either system" (p. 13) is purely theoretical. The same is true of the suggestion that the price fairly reflects the book value of Central's plan, ($75,000,000) less. Edison's willingness to pay this enormous premium casts a shadow on its alleged pure motives. It reveals Edison's eagerness to acquire Central for almost any price and under any conditions, including the willingness to return to the gas operations condemned 15 years earlier by the management.

B. The FPC Brief Filed In The Recent Duke Power Case Supports Our Claim The Purchase Price Violated The Federal Power Act.

2. Our claim the merger conflicts with the Commission duties to protect the public interest finds substantial support in the principles urged by the FPC itself in *Duke Power Co.* v. *FPC*, No. 20,578 CA Dt of Col. June 28, 1968. Its argument was largely predicated upon the legislative history of Sec. 203. Our Petition (p. 7) did state none of the problems presented there were considered applicable here, but we intended our comments to be limited to the jurisdictional issues. After filing our Petition the FPC Brief came into our possession. Though we quote from it in some detail in the Appendix to this Brief the FPC then argued mergers under the Power Act were to bear (a) a proper relation to investment or original cost, (b)

to prevent unwarranted prices,[1] (c) accounting control under the Act was insufficient to safeguard the rate payer and (d) that the consumer was adversely affected by the difference between a high purchase price and actual investment in physical property.

It is strange the FPC thought the approximately $65,000 difference (in *Duke*) between original cost less depreciation, and the purchase price (30% of the net plant) impaired the merger provisions of the Power Act, but the $75,000,000 difference here did not, even though the price paid was 80% above Central's net plant. The decision of the Court of Appeals based essentially on jurisdictional grounds is not in conflict with such contentions.

III. THE ALLEGED SAVINGS ARE NOT ONLY UNREALISTIC BUT CENTRAL'S CUSTOMERS SUFFER BY THE MERGER.

Another factor claimed to support the merger is its economic effect on operating costs and rates (pp. 8, 9). It is said that not only will Central's power costs be reduced by $13,000,000 (in the 10 year period) but other costs largely payroll and administrative costs will permit other savings of about $2,400,000. This conclusion is at war with realities. *Lindheimer* v. *Illinois Bell Tel. Co.*, 292 U.S. 151, 164. It ignores the fact that Central employees are paid a wage scale 15% below Edison's. It is inevitable that Central's wages will be increased. But more important is the fact that Exhibit II states the total operation expense of Central's electrict operations in 1965 was $8,752,358.

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[1] S. Rep. No. 621 74th Cong. 1st Sess. p. 50. It would have been useful, we think, to this Court, had the FPC borrowed from the *Duke Power brief* and included its review of the legislative history in the brief filed here.

The estimates of savings in Central's operating cost reach a total of about 40% are highly conjectural and speculative. They are not born out by the agreement to limit Centrals' customers to a single rate reduction of $270,000. Moreover, as the Motion To Remand (p. 9) discloses, Edison's overall operating expenses per customer are about 99% of Central's. Central charges lower electric rates than Edison and lower rates to a few industrial customers is not an offsetting factor.

The $13,000,000 is Central's expert estimate not an FPC study. It is open to question. FPC Statistics El. Uts. 1965 states Central's total production costs in 1965 were $4,251,000 (p. 404) (or 19% of revenues) and Edison's similar costs were $104,000,000 (p. 405) (or 18% of revenues). Subtracting $1,300,000 from Central's $4,251,000 would reduce Central's production costs to 13%, an unrealistic estimate.

IV. EFFECT ON REGULATION OF EDISON'S AND CENTRAL'S RATES.

The statement (p. 10) in the FPC brief that the integration of facilities would not lessen the ability of the Illinois Commission "to continue to regulate effectively the rates to be charged by Commonwealth" is contrary to fact. It erroneously assumes Edison's giant system is "regulated effectively". Edison's rates have been subject to public hearings on three occasions in the past 50 years. In the two rate increase cases between 1954 and 1958, Edison obtained 100% of the rate increases requested[1] and the voluntary reductions since then only offset the increases in part.

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[1] Re Commonwealth Edison Co., 24 PUR 3rd 209, re Comm. Ed. Co., ICC No. 41130 January 16, 1954.

Moreover, it is somewhat surprising for a Federal Agency which has repudiated fair value as a disaster to effective regulation to now advise this Court that Edison's rates are effectively regulated under fair value.

In *Colorado Interstate Gas Co.* v. *FPC,* 324 US 581, 604, this Court approved the Commission's rejection of "estimates of reproduction cost now less observed depreciation because they were (too) 'conjectural to have probative value' and adopted original cost as 'the best and *only reliable* evidence as to property values.'"

FPC's own calculations disclose that in 1965 Edison earned 8.56% on its net investment and Central 9.66%. Adjustments of these returns to the 6½% rate of return generally considered by the FPC to be reasonable in that year would have brought about rate reductions of about $4,000,000, in Central's case and over $25,000,000 in Edison's rates. (FPC Statistics Electric Companies 1965—pp. 651-653). The inability of utility users to have their rates determined on the basis of original cost, less depreciation, in itself contradicts the FPC statement that Edison's rates are subject to effective regulation.

V. THE FPC PROCEEDINGS AND MOTION TO REMAND.

FPC states we could have offered during the hearings evidence on "the very matters referred to in the Motion" (p. 14). Neither we, or any party, could be expected to do so for the FPC on July 6, 1966 (Rec. 1601) granted our April 5, 1966 Petition to Intervene (Rec. 1551-1562) and the hearings were held between July 11 and 20, 1966. Our request they be held in Chicago, also the location of Edison offices and witnesses, was denied.

Moerover, the FPC seems to disclaim its independent responsibility to develop an adequate record. It did not follow the usual practice in rate cases of presenting witnesses and offered few exhibits, devoted we think, primarily to power supply. It could file its 17 page Certificate of Record, and identify thereon its exhibits. We understand, that part of Edison's exhibits may have represented data desired by the FPC staff in the record. And, the FPC legal staff and Examiner did assist the League's participation though it did more than submit the extensive interrogatories, as claimed by the FPC Brief (p. 14, par. 2).

Both Edison (p. 8) (fn. 10) and the FPC (pgs. 14-15) criticized the Motion to Remand reference to air pollution (pgs. 12-13). The significance of this factor was not common knowledge until after the appeal was, though it probably was known to Edison. The FPC Brief stated the merger was favored by Rockford for it "eliminated any need for Central to build a new generating plant near the city" (p.6, fn. 6). We took the selfish view that since Edison's generation of steam energy in Chicago, and immediate area, was a major factor in Chicago's second rank in the Government's study of air pollution of metropolitan areas (p. 12), that any energy from other sources should contribute to the elimination of steam generation in Chicago. The merger requires that Rockford's interest be placed ahead of Chicago's, a questionable preference by Edison's management in view of its greater obligations to Chicago's customers.

VI. THE ANTI-COMPETITIVE FACTORS.

The absence of an adequate record on this issue is attributed in part to the fact that it was not listed among the issues to be covered in the June 3, 1966 FPC "Order

Providing for Hearing" (C.A. Rec. 34, 35), though it is one of the six factors referred to in the FPC brief (pp. 8, 17, 18) and order. (p. 7)

The FPC brief though dealing exclusively with the merits ignored those aspects of the Court of Appeals' decision concluding Petitioners had shown anti-competitive injury to Central's customers but such showing was of no consequence since Petitioner's lacked standing to raise issues affecting Central's customers (pp. 4, 5). This Court is nevertheless requested to accept the FPC's findings on this primary judicial issue, a strange departure from the customary position of the Department of Justice in anti-trust cases. (*U.S.* v. *First City Nat. Bk.*, 18 Law Ed2 151.)

The FPC brief concedes Edison's industrial rates were lower than Central's but asserts, "there was no serious competition in attracting new industrial customers to their respective service areas." (p. 17) By implication, at least, this lends support for Petitioner's Motion to Remand insofar as it contends Edison abused its economic power and discriminated against its residential customers, charged lower industrial rates in order to compete unfairly for industrial business (pp. 6, 10) against Central and other electric companies.

CONCLUSION

We have demonstrated serious errors of Law committed by the Court of Appeals and the FPC. The urgent need for this Court's consideration whether proper criteria consistent with federal laws control the elimination of the remaining small or medium size efficient electric operating companies is confirmed by current industry and govern-

mental discussion.[1] It is in this case that all proper parties can be heard—a giant representative of the industry, the governmental agencies and the also seldom separate voice of the man who pays the electric bills—the electric user and the important residential user as well.

Respectfully submitted,

UTILITY USERS LEAGUE and
NICHOLAS L. BARNES
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[1] October 1968 issue of Public Power reporting the recent Senate Commerce Committee hearings on the nomination of Albert B. Brooke, Jr. for membership on the FPC stated:

"Asked whether he agreed with a prominent power company executive who suggested that the Nation's electric utilities be reduced to 12 to 15 large systems, Mr. Brooke said that 'looking at it objectively, you might say the fewer (systems) the better.' However, he also agreed in answer to another question that small systems may perform as valuable a service as large systems." (pp. 26, 27)

APPENDIX

QUOTATIONS FROM FPC's BRIEF IN DUKE POWER COMPANY, v. FPC, NO. 20578 CA Dt. of Col.

Referring to the report of the National Policy Committee on Public Utility Holding Companies transmitted to Congress by the President which said:

> "The commission should have power to prevent acquisitions at prices which do not bear a proper relation to the capital prudently invested in the underlying utility properties, or if the acquisition would tend to create monopoly or restraint of trade in the exercise of control of public-utility companies." (S.Rep. No. 621, 74th Cong., 1st Sess., p. 2) (P. 11)
>
> "C. Petitioner also argued before the Commission that through its authority over accounts the Commission has adequate means of discharging its regulatory responsibility without the use of Section 203. But this is merely to argue that the Commission is only empowered to lock the barn after the horse is stolen . . . (p. 18)."
>
> "For while it may be possible by accounting measures to prevent the retention in the purchaser's capital accounts of the excess over the seller's net investment, and while it may be possible, where an excessive price has been paid to prevent it from permanently increasing the rate base upon which rates must thereafter be fixed, the financial effect of a too-high purchase price on cost of money to the purchaser may be so substantial and stubborn, that in the long run, the ratepayer will have to bear the burden in the rate of return allowed. See the penetrating analysis by Chairman James M. Landis in Western Air Lines Inc. and United Air Lines, Inc., 8 CAB 298, 325-345 (dissenting). That is, undoubtedly, one of the reasons util-

ity rate regulatory powers are usually buttressed with powers to regulate property and security transactions. (pp. 19, 20)

"That the amounts involved in the present case are small in relation to the size of the acquiring company and hence may not noticeably affect its cost of money is not relevant to our question here, which is that of the proper interpretation of the Act to apply to all cases, including those in which the amounts involved may not be relatively small as here." (p. 20)

"Here again, petitioner has overlooked the Act's purposes already discussed, *i.e.*, prevention if inflation in the financial structure of a 'public utility' through acquisitions at excessive prices." (p. 21)